

The Wisconsin Department of Transportation adopts an order to amend TRANS 28.02(5), (8) and (11), 28.03, 28.04(2), 28.05(1)(b)2.d. to f., (2)(e) and (g), 28.06(1), 28.07(1) and (3), 28.08(2)(intro.), (a), (c), (4)(b) and (5)(intro.), 28.09(2)(a)3., 6. and 7., (e), (3) and (4), and 28.10, relating to expanding eligibility for Harbor Assistance Program grants to private owners of harbor facilities

ORDER ADOPTING RULE**Analysis Prepared by the Wisconsin Department of Transportation**

Statutes interpreted: s. 85.095, Stats., including s. 85.095(1)(a), (1)(am) and (5), Stats., as amended or created by 2003 Wis. Act 208

Statutory authority: ss. 85.16(1), 85.095 and 227.11(2), Stats.

Explanation of agency authority: The Wisconsin Department of Transportation administers the Wisconsin Harbor Assistance Program, pursuant to s. 85.095, Stats. Chapter Trans 28 prescribes the administrative policies and procedures for implementing the Harbor Assistance Program authorized by s. 85.095, Stats.

Related statute or rule: There are no related statutes or rules other than those listed above.

Plain Language Analysis: 2003 Wisconsin Act 208 amended s. 85.095, Stats., providing eligibility to private owners of commercial harbor facilities to make a direct grant application to the Wisconsin Department of Transportation's Harbor Assistance Program (HAP) rather than through a public harbor authority under a lease-back arrangement. Applications are solicited semi-annually from Wisconsin's commercial ports to present infrastructure improvement projects for consideration and possible funding by the HAP. The grant applications are reviewed for responsiveness to the requirements of ch. Trans 28, Wis. Adm. Code. They are then ranked and scored by the program's Harbor Advisory Council (HAC), which is comprised of representatives from prescribed constituencies. The HAC, upon due consideration, makes recommendations to the Secretary of the Department of Transportation as to which application(s) should be funded. These recommendations are then forwarded to the Governor for his consideration. The announcement of a grant award is made through the Governor's office.

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: There are no comparable federal laws or regulations.

Comparison with Rules in Adjacent States:

Michigan: Harbor assistance in Michigan takes the form of operating and capital assistance to port authorities that oversee ferryboat operations. The capital assistance is found in a marine capital line item and is limited to \$800,000 per year.

Minnesota: Minnesota created a Port Development Assistance Program in 1996. It is similar to Wisconsin's HAP in that it mixes bonding authority with state dollars to fund infrastructure improvement projects.

Illinois: None

Iowa: None

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: No data or analytical methodology was employed in considering this rule making.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: This rule should not impact small businesses.

Fiscal Effect and Anticipated Costs Incurred by Private Sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state revenues or private sector liabilities.

Agency Contact Person: Copies of the rule may be obtained, without cost, by writing to Larry Kieck, Department of Transportation, Bureau of Rails and Harbors, Room 701, P. O. Box 7914, Madison, WI 53707-7914. You may also contact Mr. Kieck by phone at (608) 267-9319 or via e-mail: lawrence.kieck@dot.state.wi.us. Alternative formats of the rule are available upon request.

TEXT OF RULE

SECTION 1. Trans 28.02(5), (8) and (11) are amended to read:

Trans 28.02(5) "Dock wall" means any ~~publicly owned~~ bulkhead, pier or shoreline development used as a commercial transportation facility.

(8) "~~Eligible applicants~~" ~~means a county, municipality, town or agency thereof or a board of harbor commissioners organized under s. 30.37~~ applicant" has the meaning given in s. 85.095(1)(a), Stats.

(11) "Project priority list" means a ranking by the department, assisted by an advisory council as described in s. Trans 28.06(3), of various eligible applicant-proposed harbor improvement projects in the rank order in which the department proposes to fund the various projects.

SECTION 2. Trans 28.03 is amended to read:

Trans 28.03 Harbor assistance program objective. The objective of the harbor assistance program is to assist the ~~eligible applicants~~ applicant to provide necessary water access and to maintain or improve the economically effective commodity movement capabilities of Wisconsin's harbors on the Great Lakes or the Mississippi River system.

SECTION 3. Trans 28.04(2) is amended to read:

Trans 28.04(2) LOCATION. Eligible projects shall be located only in Great Lakes or Mississippi River system harbors where vessels take on or discharge a combined total of more than 1,000 tons of commercial cargo per year; where commercial, naval or recreational vessels are built; where passenger or vehicle-carrying ferry service connects the Wisconsin communities along the Great Lakes and Mississippi River, or connects the Wisconsin mainland with other states, Canadian provinces or populated islands in Wisconsin or where commercial fishing vessels unload fish. The U.S. army corps of engineers' annual tonnage figures shall be the

basis for the tonnage determination; where tonnage figures are not available, ~~an~~ the eligible applicant shall provide tonnage figures based on auditable records.

SECTION 4. Trans 28.05(1)(b)2.d. to f., and (2)(e) and (g) are amended to read:

Trans 28.05(1)(b)2.d. New project development of a ~~publicly-owned~~ commercial transportation facility, where the development involves dredging, dredged material disposal and dockwall construction.

e. Maintenance of a ~~publicly-owned~~ commercial transportation facility other than maintenance described in subd. 2. a., b. or c.

f. New project development of a ~~publicly-owned~~ commercial transportation facility other than that development described in subd. 2.d.

(2)(e) The project is speculative; that is, the eligible applicant for a new project development has no firm financial commitment from a potential lessee or operator that ensures future, productive use of the work performed under the project.

(g) The eligible applicant has not met the program planning requirements under s. Trans 28.10.

SECTION 5. Trans 28.06(1) is amended to read:

Trans 28.06(1) The department shall annually establish deadlines for filing harbor assistance project applications and shall give appropriate notice of the deadlines. Notice shall be by mail, sent to ~~the clerks of all municipalities having jurisdiction over commercial harbors on the Great Lakes, and on the Mississippi River~~ every eligible applicant that has met the planning requirements under s. Trans 28.10.

The department shall issue notice of the grant awards within 180 days after an

application deadline. No grant funds may be committed to an eligible applicant until a grant agreement is negotiated and signed by the department and the eligible applicant.

SECTION 6. Trans 28.07(1) and (3) are amended to read:

(1) In accordance with s. 85.095(2)(a), Stats., the state share of project costs may not exceed 80% of the eligible costs incurred by the eligible applicant for the harbor assistance project.

(3) For projects with federal funding, other than those projects funded in part by the U.S. army corps of engineers as described in sub. (2), the state share may not exceed 80% of the non-federal share of project costs; furthermore, the minimum ~~local~~ eligible applicant share shall be no less than 10% of project costs.

SECTION 7. Trans 28.08(2)(intro.), (a) and (c), (4)(b) and (5)(intro.) are amended to read:

(2)(intro.) The types and amounts of costs eligible for state assistance shall be negotiated in developing a grant agreement. Eligible costs may include final engineering, construction, and dredging costs and other costs agreed to by the department and the eligible applicant. The following items, however, are not eligible for reimbursement:

(a) ~~Applicant's~~ Eligible applicant's general grant administration costs;

(c) Interest on money borrowed by the eligible applicant or interest charged to the applicant for late payment of project costs.

(4)(b) Provide evidence of performance and payment bonds, satisfying all applicable requirements of ss. 30.32 and 779.14, Stats., for the full amount of any and all construction contracts let by the eligible applicant in connection with the project.

(5)(intro.) In the grant agreement, the department shall require repayment of grant funds advanced to an eligible applicant if:

SECTION 8. Trans 28.09(2)(a)3., 6. and 7., (e), (3) and (4) are amended to read:

Trans 28.09(2)(a)3. A statement that the eligible applicant will accept responsibility for operation and maintenance of the proposed project after completion of the work funded.

6. A statement that the eligible applicant agrees to provide the department, in a timely manner, additional analysis or documentation supporting the application, whenever the department considers it necessary during the application review process.

7. A statement that the eligible applicant agrees to provide required matching funds up to a stated maximum at the time and in the manner specified in the grant agreement.

(e) An estimate of the eligible applicant's annual revenues from the project if completed, or of revenues lost if the project is not completed, and an estimate of the annual costs necessary to maintain the project property.

(3) If an eligible applicant fails to supply required information or supplies erroneous information, the department may disapprove the application.

(4) ~~Applicants~~ The eligible applicant shall submit ~~applications~~ an application to the department by August 1 in order to receive primary consideration for funding during the following calendar year. If funds are available, applications may be submitted by March 15, 1985, and by February 1 of each year thereafter, for funding in the same

calendar year. The department may waive the requirements in this subsection for emergency repair projects.

SECTION 9. Trans 28.10 is amended to read:

Trans 28.10 Planning requirement. No grant may be made under s. 85.095, Stats., and this chapter, unless the eligible applicant provides the department a description of the harbor projects for which the applicant may request state assistance under s. 85.095, Stats., or federal aid, or both, during the next 3 years. The description shall be submitted prior to April 1 preceding the fiscal year in which the applicant seeks aid under this chapter. The department may waive this planning requirement.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this ____ day of June, 2005.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation